Chapter X specifically provides that where no answer is filed by a debtor to a petition against it, or if the answer filed does not controvert any material allegation of the petition, the judge may enter an order approving the petition if satisfied that it complies with the requirements of Chapter X and has been filed in good faith. Section 142 (11 U. S. C. 542). Where an answer is filed by the debtor which controverts any material allegations of the petition, it is provided that the judge shall determine the issues presented by the pleadings and enter an order approving or dismissing the petition. Section 143 (11 U. S. C. 543). The type of answer here filed, which consented to and joined in the request for relief while controverting an allegation which but for the consent would have been material, has been filed occasionally in the past for the purpose of not conceding allegations which indicate liability on the part of the debtor's directors, but we are aware of no other instance where it was contended that denials in such an answer created an issue triable in connection with approval of the petition.

In any event, since the debtor joined in the petition and since, when relief is sought by a debtor, there is no need to allege an act of bankruptcy, the court below properly treated as immaterial the allegation of the creditors' petition as to preferential transfers while insolvent (Pet. 36). Any other result would have been illogical

and wholly unrealistic, particularly since, as pointed out by the court below (Pet. App. 37), a debtor's written admission of inability to pay its debts and willingness to be adjudged bankrupt constitutes an act of bankruptcy uner Section 3 (a) (6) of the Act (11 U. S. C. 21 (a) (6)); hence, had the petition been dismissed, the petitioning creditors would merely have had to file a new petition alleging the debtor's answer as an act of bankruptcy.

As pointed out by the court below, its determination was not inconsistent with its previous decision in *Moore* v. *Linahan,* 117 F. 2d 140, certiorari denied, 314 U. S. 628. In that case the question was whether an answer consenting to an involuntary petition should be treated as a voluntary petition *for the purpose of withdrawal of the answer* under Section 59 (g) of the Act (11 U. S. C. 95 (g)) and not, as here, for the purpose of eliminating proof of an act of bankruptcy. In the instant case the court below held that its determination was not "that the debtor's answer becomes a voluntary petition, but merely that the filing of such an answer makes it unnecessary for the petitioner to allege or prove any of the acts required by Section 131, 11 U. S. C. A. § 531" (Pet. App. 37). In fact, *Moore* v. *Linahan* supports the conclusion of the court below in that Judge Learned Hand there indicated that where the debtor "chooses to pray for the approval of an involuntary petition" it is doubtful that "either

creditor, 'indenture trustee' or stockholder can press to decision the added allegation required by Section 131; that is, can vicariously assume the debtor's defense as to something against which it does not want protection" (117 F. 2d at 143). This view would seem to apply *a fortiori* to the present case.

Other authorities cited by petitioner are irrelevant. We do not dispute the necessity either of pleading jurisdictional facts or of proving them when challenged, and we agree that where there is no jurisdiction over the subject matter, as in diversity cases where the requirements of diversity are not met or in cases where the amount involved is insufficient to meet the jurisdictional minimum, jurisdiction over the subject matter cannot be conferred by consent. We submit, however, that these principles, for which petitioner's authorities stand, have no application here. As the courts below held, petitioner's answer was not a mere "consent" to a nonexistent jurisdiction; the answer, even apart from the fact that it was in itself an act of bankruptcy (*supra*, p. 11), supplied the factual basis on which Congress could and did provide for jurisdiction under Chapter X.

2. Petitioner's remaining contention (Pet. 29–31)—that it had an absolute right to file an amended answer after the District Court had approved the Chapter X proceeding on the allegations of the original answer—is neither sub-

stantial nor relevant to the orders brought for review to the Court of Appeals and this Court. The only order to which this contention could conceivably be addressed is the order (pp. 7–8, *supra*) denying petitioner's motion for leave to withdraw both its original answer and its amended answer and to file an "answer de novo." We believe, of course, that the observations of the court below on the tardy and unauthorized effort to file an amended answer are clearly correct (Pet. App. 38). But even if this point were doubtful, it could not help the petitioner. First of all, as the court below noted (Pet. App. 39), the amended answer could have made no difference because in it "the debtor reiterated its consent to reorganization and its inability to meet its debts as they matured." Secondly, and decisively, the propriety of the attempt to file the amended answer was not necessary to decision in the Court of Appeals and is not here. All that was appealed was the order denying leave to file a much later "answer de novo"—an order which is not even questioned here and was plainly justified by the finding that the motion seeking such leave was not filed in good faith and was without merit (*supra*, p. 8).

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 924

A Proceeding for Reorganization Under Chapter X of the Bankruptcy Act
No. 90460

In the Matter

of

HUDSON & MANHATTAN RAILROAD COMPANY,

Debtor-Petitioner.

WILLIAM J. HARDING, JR., IRVING I. SCHNUR and SHIRLEY REITER,

Petitioning Creditors, Respondents.

PETITIONER'S REPLY BRIEF

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